

## **CHAPTER TWO**

### **GENERAL ENFORCEMENT PROCEDURES**

Much of what the Department does to bring facilities into compliance is of a non-adversarial nature and is geared toward the use of consensual means. These actions include Letters of Agreement, informal meetings, and Consent Orders. When non-adversarial means fail or would be inappropriate, adversarial enforcement actions should be pursued. These actions include adversarial Informal Factfinding proceedings, 1186 Special Order proceedings, Emergency Orders, Formal Hearings, and litigation.

The different enforcement actions available to the enforcement staff are set forth below in an ascending, progressive order. Questions regarding the appropriateness and applicability of any of the following enforcement methods are to be directed to the appropriate media specialist with the Office of Enforcement Coordination.

#### **I. ENFORCEMENT ACTIONS**

Sections I (A) through I (C), pages 2-1 to 2-6, have been superseded.

#### **D. LETTERS OF AGREEMENT**

A Letter of Agreement (“LOA”) is an informal enforcement mechanism, which represents a non-binding agreement between the facility and the Regional Office (pursuant to authority delegated to it) to correct suspected violations. The LOA must cite the alleged violations and state which corrective actions the facility has agreed to take. Civil charges cannot be assessed in an LOA. Either the Regional Director signs the LOA or the Compliance and Enforcement Manager signs the LOA on behalf of the Regional Office.

The LOA is not a statutory enforcement tool. It does not discharge liability for alleged violations and cannot be used as a defense to federal or state enforcement or to a citizen suit.

##### **1. When Not To Use an LOA**

LOAs are not to be used for:

- Periods longer than twelve months.
- Setting interim effluent or emissions limits.
- Repeat offenders.
- Operating pending permit issuance.
- RCRA facilities.
- Continuous Emission Monitoring.
- Priority Cases (see Chapter Three).

## **2. Boilerplate Letter of Agreement**

A boilerplate LOA is found at Attachment 2A-3. This boilerplate is to be used for the issuance of all LOAs except where a specific LOA boilerplate has been developed and approved by the Office of Enforcement Coordination for a particular category or situation. Specific LOA boilerplate has been approved for:

- The UST program. See Attachment 2A-13.

If the boilerplate does not address a particular situation, the Office of Enforcement Coordination staff must be contacted before proceeding further.

## **E. CONSENT ORDERS**

A Consent Order (“CO”) is an administrative order issued with the consent of the owner or other responsible party, to perform specific actions to come into compliance with the relevant law and regulations. They are usually used with private, federal, or local entities. (For enforcement against state agencies, see § I.F (Executive Compliance Agreements)). The Regional Offices are responsible for developing Consent Orders and generally draft them after one or more meetings with the facility. COs are developed cooperatively and entered into by mutual agreement, even though the Consent Order is a direct order to the facility to comply. They therefore are issued without an adversarial proceeding. A CO may or may not include a determination that a violation has occurred.

For clarification, Consent Orders are not the same as consent decrees. Consent Orders are administrative orders issued by the agency, whereas consent decrees are issued only by a court.

### **1. Boilerplate Consent Order**

A boilerplate Consent Order is found at Attachment 2A-4. This boilerplate is to be used for the issuance of all COs except where a specific CO boilerplate has been developed and approved by the

Office of Enforcement Coordination for a particular category or situation. Specific CO boilerplate has been approved for:

- The UST program. See Attachment 2A-14.

If the boilerplate does not address a particular situation, the Office of Enforcement Coordination staff must be contacted before proceeding further.

## **2. Appropriate Uses of Consent Orders**

Consent Orders may be used to:

- Establish an enforceable course of action for bringing a facility into compliance expeditiously by, among other things: (i) setting interim emissions and effluent limits; (ii) requiring a facility to get a permit; (iii) providing schedules for upgrades, modifications, startups and shakeouts; (iv) requiring site assessment and remediation; and (v) imposing new control technology testing and implementation.
- Assess and collect civil charges for past violations of environmental statutes and regulations, consistent with appropriate Department guidelines, to include the recovery of economic benefit.
- Explain what types of actions DEQ may take if the facility fails to meet the deadlines in the Consent Order.
- Recoup appropriate costs, including those associated with fish kills.

## **3. Enforcement Recommendation and Plan**

The staff documents its justifications for the proposed enforcement resolution in an Enforcement Recommendation and Plan (“ERP”). ERPs should be brief and concise and need not be longer than two pages. In most cases, the ERP is completed before beginning negotiations with the facility unless a meeting is needed to gather information from the facility to complete the ERP. The ERP must:

- Discuss the alleged violations.
- Assess the strength and weaknesses of the case.
- Discuss various available enforcement tools and strategies.
- Make a recommendation for enforcement action.
- If appropriate, suggest either a civil charge or a negotiation range.

If a civil charge is suggested, the civil charge analysis must be attached to the ERP. The ERP is signed by appropriate DEQ management and is kept in the case file to show that the recommended action has the approval of management. The authority to determine the appropriateness of settlement actions recommended by their staff has been delegated by the Director to the Regional Directors.

ERPs are to be revised accordingly if substantial changes are appropriate based on new information discovered during the negotiation process. A boilerplate ERP form is found at Attachment 2A-5.

During the active administrative investigation, an ERP is not subject to production under the Freedom of Information Act (“FOIA”). Once the investigation is concluded (*i.e.*, Consent Order is signed), however, ERPs may be subject to production under FOIA if no other exemption or privilege applies.

See section 8 below regarding the Office of Enforcement Coordination review of ERPs.

#### **4. Civil Charges**

Where authorized by statute, the Department may by consent impose civil charges in a Consent Order pursuant to media-specific criteria. Civil charges are used to address:

- An amount reflecting the degree of environmental damage.
- The amount necessary to deter future noncompliance by the same or another party.
- The history of noncompliance.
- The economic benefits accruing to a party from delayed or avoided compliance.

Civil charges are assessed using the guidelines in Chapter Four. See section 8 below regarding the Office of Enforcement Coordination review of ERPs that recommend civil charges.

#### **5. Suspended Civil Charges**

A “suspended civil charge” is a civil charge recited in a Consent Order that has been suspended or held in abeyance pending the full completion of the terms of a Consent Order. The civil charge would not be paid if the Consent Order is fully complied with.

Suspended civil charges may be included in a Consent Order only upon the recommendation of the Director of the Office of Enforcement Coordination and the approval of the Director. They are used only for extraordinary or compelling circumstances and only on a case-by-case basis. The following would be an appropriate use of suspended civil charges under the extraordinary or compelling circumstances concept:

- Facility Resource Allocation: It may be appropriate to suspend all or part of the civil charge if the facility has sufficient resources so as to not be defined as “unable to pay,” but the payment of the civil charge would present a genuine economic hardship. This justification is likely to present sufficient compelling circumstances only when the Consent Order at issue also included substantial injunctive relief. Local governments, public interest entities (clinics or nursing homes, low income housing), and nonprofit organizations may be appropriate candidates for consideration here.

See section 8 below regarding the Office of Enforcement Coordination's review of ERPs that recommend suspended civil charges.

## **6. Supplemental Environmental Projects**

Supplemental Environmental Projects ("SEPs") are environmentally beneficial projects that a facility agrees to undertake as part of a CO in partial settlement of an enforcement action for which the facility is not otherwise legally required to perform. See Va. Code § 10.1-1186.2. Department staff must follow the SEP procedure provided in Chapter Five. See section 8 below regarding the Office of Enforcement Coordination review of ERPs that recommend SEPs.

## **7. Finalizing the Consent Order**

Once prepared in accordance with the ERP and reviewed by the Office of Enforcement Coordination as required in section 8 below, the draft Consent Order is sent to the facility for review. Before finalizing the CO the Regional Office considers the facility's comments and, where appropriate, incorporates them into the final Consent Order. Where the facility's comments represent a substantive difference between the facility and the Department, a conference or other means should be used to resolve those differences.

All provisions in a Consent Order are to be agreed to before it is signed by an authorized official of the facility and the Department. The facility will be required to sign the order first. The Regional Director would then sign the CO on behalf of the Director of DEQ. Copies of all executed final Consent Orders shall be sent to the Office of Enforcement Coordination.

- **Water Consent Orders:** By law, all water Consent Orders must be approved by the State Water Control Board ("SWCB") and advertised for public comment for 30 days. Before a Consent Order is presented to the SWCB, the public comment period must be completed. Recommendations to the SWCB for approval of Consent Orders must contain a request for delegation of signature authority and cancellation authority for compliance to the "Director or his designee." Orders must be submitted to the Central Office for inclusion in the SWCB meeting agenda review and SWCB briefing books in preparation for presentment to the SWCB at its quarterly meetings. Under the State Water Control Law and permit regulation, Consent Orders for VPDES and VPA must be public noticed in a general circulation local newspaper and in the *Virginia Register*. In addition, Consent Orders purporting to remedy discharge violations must be noticed directly to the municipal entity in which the discharge is located, according to Code § 62.1-44.15:4(E). Virginia Water Protection permits (Va. Code § 62.1-44.15:5) are also covered by the State Water Control Law and consequently may be subject to the same public notice requirements.
- **Hazardous and Solid Waste Consent Orders:** As required by 9 VAC 20-60-70(G) and 9 VAC 20-80-110(E), Waste Program Consent Orders must receive proper public notice prior to issuance. Notice of a CO signed by a party should be published in a local

newspaper and broadcast over local radio stations at least 30 days before the Consent Order is signed by the Department except where the CO requires some immediate action. Unlike water Consent Orders, Waste Consent Orders are not required to be published in the *Virginia Register*.

- Air Consent Orders: Consent Orders issued in the Air Program are not subject to public comment or Board review and are not published in the *Virginia Register*.

A sample transmittal letter for publication of notice in the *Virginia Register* is found at Attachment 2A-6. The *Virginia Register's* processing of the notice takes at least 19 days. An updated copy of the Registrar's Publication Deadlines and Schedules are provided in each issue of the *Virginia Register*, or may be obtained from the Registrar's office. A *Directory of Virginia Newspapers* may be obtained from the Virginia Press Association, Post Office Box 85613, Richmond, VA 23285-5613 (804-550-2361).

## **8. Review by Office of Enforcement Coordination**

The Office of Enforcement Coordination reviews for consistency all ERPs and draft Consent Orders that are being negotiated with Priority Cases. It also reviews for consistency all ERPs and draft Consent Orders containing Supplemental Environmental Projects ("SEPs"), civil charges in excess of \$25,000, and compliance schedules lasting longer than two years. As noted above, all Consent Orders proposing to include a suspended penalty must be approved by the Director upon recommendation of the Director of the Office of Enforcement Coordination.

Where the Office of Enforcement Coordination review is required, the Regional Offices are encouraged to discuss ERPs and Consent Orders with the Office of Enforcement Coordination staff during their development and prior to being sent to the Office of Enforcement Coordination for review. The Regional Offices provide ERPs and draft orders to the OEC for review before they are sent to the facility. The Office of Enforcement Coordination staff will respond within three days to the Regional Office with its comments, provided the case has been discussed by the staffs beforehand. A longer time may be required if the case has not been discussed previously.

## **9. Collecting Civil Charges**

After a CO has been executed, the time clock for paying the civil charge starts. The Commonwealth Accounts Payable Procedures Manual ("CAPP") governs the management of accounts payable and receivable to state agencies. The day an order is executed, the civil charge becomes an account receivable, and all accounts receivable are the responsibility of the Fiscal Office. It is imperative the Fiscal Office receive a copy of the executed order so it can initiate the CAPP tracking procedures. The Fiscal Office will copy the Regional Office on copies of dunning letters and will keep the specialist informed when a party pays. The Fiscal Office has the responsibility for referring cases to a collection agency or the Attorney General's Office for collection of past due civil charges.

In order to assist in collecting civil charges, all COs must specify that the payment check include the party's Federal Identification Number and a notation that it is for payment of a civil charge pursuant

to the CO. The CO must also indicate that the civil charge payment is to be made out to the Treasurer of Virginia and sent to the following address:

Receipts Control  
VA DEQ  
P.O. Box 10150  
Richmond, VA 23240

#### **10. Terminating Consent Orders**

A Consent Order may be terminated by a letter signed by the Regional Director and sent to the facility, stating that the Consent Order is terminated because the facility has met all of the terms and conditions of the Consent Order. Water Consent Orders, however, can be terminated only by the State Water Control Board after 30-day notice to the affected party unless the particular order contains specific self-termination language governing its expiration.

#### **F. EXECUTIVE COMPLIANCE AGREEMENT**

Enforcement against state agencies is to proceed in the same manner and consistent with enforcement against all other facilities where permitted by law. An Executive Compliance Agreement is used when dealing with state agencies. Consent Orders and Executive Compliance Agreements are similar in most respects. Executive Compliance Agreements, however, never contain civil charges because civil charges are not assessed against a state agency. They also are not enforceable in court. In drafting an Executive Compliance Agreement, the procedures for Consent Orders should be followed.

A boilerplate Executive Compliance Agreement is found at Attachment 2A-7, and a boilerplate Executive Compliance Agreement for UST is found at Attachment 2A-15. This boilerplate is to be used for the issuance of all Executive Compliance Agreements except where a specific boilerplate has been developed and approved by the Office of Enforcement Coordination for a particular category or situation. If the boilerplate does not address a particular situation, the Office of Enforcement Coordination staff must be contacted for discussions on how to proceed.

#### **G. APA ADVERSARIAL PROCEEDINGS**

The Virginia Administrative Process Act (“APA”) provides two processes for addressing noncompliance in an adversarial setting. They are: (1) the adversarial Informal Factfinding proceeding provided for in § 9-6.14:11 of the APA, which also governs the 1186 Special Order proceedings; and (2) Formal Hearings provided for in § 9-6.14:12 of the APA. Detailed procedures for conducting these proceedings are found in Chapter Six.

## **H. EMERGENCY ORDERS AND EMERGENCY SPECIAL ORDERS**

Each of the media basic laws provides for the issuance of administrative Emergency Orders in the event special circumstances exist that require immediate action to abate imminent and substantial injury or damage. *See* Va. Code § 10.1-1309(B) (Air); §§ 10.1-1402(18) and (21), § 10.1-1409(D) (Waste); § 62.1-44.15(8b) (Water). In the Air and Water Laws, Emergency Orders are called Emergency Special Orders. Here they are referred to collectively as “Emergency Orders.” Be sure to review these laws for specific mandates regarding the issuance of Emergency Orders, including the time required for hearings on cease and desist orders.

Emergency Orders are the administrative equivalent of temporary injunctions. They are effective upon service and are issued without the consent of the facility to which it is directed. The facility is given little or no prior notice or opportunity to comment. By law, a Formal Hearing must be held promptly after reasonable notice to the facility to affirm, modify, amend, or cancel the Emergency Order. The basic law must be consulted regarding the rights of persons subject to Emergency Orders.

The following steps are to be taken before issuing an Emergency Order:

- Sketch out the case.
- Determine whether the statutory criteria have been met for an Emergency Order including any declarations or findings.
- Contact the Attorney General’s Office to discuss the appropriateness of the proposed action and the proper procedures to be followed.
- Prepare the Emergency Order, which must set forth:
  - ◆ The purpose of the Emergency Order.
  - ◆ The authority to issue the Order.
  - ◆ A clear and concise statement of the facts constituting the emergency and any necessary declaration or finding.
  - ◆ A clear and concise statement of what the party is ordered to do or refrain from doing.
  - ◆ A statement of the party’s right to a subsequent hearing.
- Line Up a Hearing Officer. See Chapter Six.
- Prepare the Notice of Hearing.
- Determine whom to serve and then serve the order and notice.

The executed Emergency Order must be transmitted to the party by a means that is quick, certain, and verifiable, *e.g.*, hand-delivery, sheriff service, express carrier, process server. A copy of the order may be transmitted by facsimile if receipt is confirmed. A copy should also be sent by certified mail, return receipt requested, if not delivered by hand.

Circumstances serious enough to issue an Emergency Order are also in all likelihood serious enough to require notice to the local government of the alleged violations. See Code §§ 10.1-1310.1 (Air), 10.1-1407.1 (Waste), and 62.1-44.15:4 (Water).

In the case of Emergency Special Orders issued under the Water Law, the issuing party must notify the Office of Policy and Legislation to poll the Water Board members by telephone after the Order is issued to schedule the Board meeting to address the Emergency Special Order.

## **I. JUDICIAL ACTION**

Judicial enforcement of Virginia's environmental laws and regulations can be pursued by means of civil suits and criminal prosecutions depending on the facts of the alleged violations.

### **1. Civil Suit**

After attempting all other appropriate options, the Director may determine that court action is the next appropriate step. Civil litigation should be considered only after all reasonable administrative options have been exhausted. Remedies include temporary and permanent injunctions and civil penalties. Referrals are to be drafted according to the Office of the Attorney General Protocol.

A referral to the Office of the Attorney General ("OAG") may be appropriate where:

- Enforcement staff has been unable to obtain compliance by any other means.
- An order has been violated.
- A serious threat to human health and the environment is present.
- There are ongoing violations.
- The party has a history of noncompliance.

Only the Director of DEQ is authorized to refer cases to the OAG. This authority has not been delegated. Thus all referral packages, once finalized, are sent to the Director for approval and transmittal to the OAG.

Referral packets are prepared by the Regional Office staff with the assistance of the Office of Enforcement Coordination staff. Each packet is to be discussed with the OAG before it is finalized to make sure it is complete and in proper order. The Regional Office staff and OEC must also make sure the remedy sought is authorized by the governing statute and regulations. The referral package must contain an authorization to sue letter signed by the Director, a memorandum in support of litigation, and appendices containing the regional enforcement recommendation, the Notice of Violation, and a copy of the regional file.

If the OAG accepts the referral and files suit, the enforcement staff and OEC staff, where appropriate, assist in case preparation and provide litigation support.

In addition, in the Water Program a 15-day letter is sent to the facility, notifying it that DEQ plans to ask the State Water Control Board to authorize it to refer the matter to the Attorney General's Office for judicial enforcement. See Attachment 2A-8.

## **2. Criminal Prosecution**

If there is evidence of criminal activity, the regional staff must notify the Office of Enforcement Coordination Criminal Investigator and prepare a criminal referral package consisting of the completed form *Criminal Investigation Notification Routing -- Confidential* (see Attachment 2A-9), the case file and any evidence demonstrating criminal activity. Criminal prosecution under Virginia environmental laws is undertaken by Commonwealth's Attorneys and by federal prosecutors. Department support is coordinated by the Office of Enforcement Coordination. The Regional staff provides assistance as requested.

A criminal referral does not preclude the exercise of DEQ's administrative remedies, and all regional compliance and enforcement activities continue after the case is referred. Civil actions should proceed unless written notification to the contrary is provided by the Office of Enforcement Coordination. Efforts are to be made, however, to minimize interference and overlap. In instances where there are parallel civil and criminal proceedings or an ongoing criminal investigation, the Criminal Investigation Unit must be notified of all proposed civil remedies. In some cases, remedies sought in a civil action (administrative or judicial) may affect the ability to pursue criminal enforcement.

## **J. REFERRAL OF CASES TO EPA FOR ENFORCEMENT**

DEQ intends to use all available means to address violations of the laws and regulations it is mandated to enforce. One such mean is a referral of a case to EPA for enforcement. Referrals to EPA, however, are used only on rare occasion.

### **1. Criteria for Considering a Referral to EPA**

The following criteria are to be considered in determining whether to refer a case to EPA for enforcement:

- All reasonable administrative options have been explored and attempted, where appropriate, and such efforts have not brought the case to an acceptable conclusion.
- The Attorney General's Office has been consulted and concurs with the recommendation to refer the case to EPA.
- DEQ has insufficient resources to pursue the case adequately because of the nature and/or complexity of the case.
- The case has interstate interests that warrant a more extensive action from EPA.
- The responsible party is out-of-state and beyond the reaches of DEQ.

- Federal remedies are more appropriate or adequate to address the alleged violations.

## **2. Process for Referring a Case to EPA**

The Director makes all final decisions to refer a case to EPA for enforcement upon the recommendation of the Director of the Office of Enforcement Coordination (“OEC”). Before doing so, the Regional and OEC staffs discuss the merits of the case, applying the criteria set forth above. At the same time the staffs will discuss the case with the Attorney General’s Office for advice regarding available options. A case will not be referred to EPA if there is agreement that other options should be pursued or it should be referred to the Attorney General’s Office. The staffs also receive input from EPA regarding the potential referral.

If it is determined that a particular case should be referred to EPA, the Region would transmit the referral package to the Director of the Office of Enforcement Coordination with a short cover memorandum from the Regional Director transmitted through the OEC Director to the Director. The memorandum would request a referral to EPA, explaining that the criteria for referral had been met.

The referral package to EPA would include a letter from the Director (prepared by OEC), a brief memorandum prepared by the Region outlining the facts of the case, and attachments relevant to explain the case to EPA. The attachments may include the whole file or only select documents (*i.e.*, NOV, draft consent order, reports) in the file, depending on the file’s size. Additional information will be provided to EPA upon request.

## **II. CASE CLOSURE AND DEREFERRAL**

Enforcement actions are concluded one of two ways: (1) a case may be closed if full compliance has been achieved or (2) a case may be “dereferral,” meaning that an enforcement action is being terminated for one reason or another without being brought to full closure. The same Case Closure Memorandum form is used in both situations. See Attachment 2A-10.

### **A. CASE CLOSURE**

When no further action is required and satisfactory compliance has been achieved, a case is ready to be closed. In closing a case the enforcement specialist determines, along with the compliance and permitting staff if necessary, whether all terms of the LOA or Consent Order and all other requirements have been met. This includes permits obtained, closure plans submitted, plans implemented, civil charges paid, and completion of any other requirement imposed as part of the enforcement action.

The specialist prepares a Case Closure Memorandum, which is similar to an ERP. The Memorandum identifies the facility, the violations addressed, the corrective action performed, the date of the order or other enforcement action taken, and the justification for the Case Closure. The justification may include a report from the inspector that the facility is in compliance or a letter from the permitting staff that clean closure has been achieved. The inspection report would be attached to the

Case Closure Memorandum. The enforcement specialist and appropriate management sign the Case Closure Memorandum.

In the case of Water Enforcement Actions, the Consent Special Order may have to be brought before the Water Board for cancellation depending on its terms.

Once the Case Closure Memorandum is finalized, it is placed prominently in the file identifying the case as closed. At the same time the facility is notified by letter from the Regional Director that the case is closed for the reasons specified in the Case Closure Memorandum. This letter serves as sufficient notice to the party that the enforcement action has been terminated. Appropriate permitting and/or Office of Enforcement Coordination staff are also notified and provide a copy of the letter to the facility, if requested.

A boilerplate Case Closure Memorandum is found at Attachment 2A-10.

## **B. DEREFERRAL**

As noted above, "Dereferral" means that an enforcement action is being terminated for one reason or another without being brought to full closure. Reasons for Dereferral include, but are not limited to:

- No enforcement action is required.
- No enforcement action will achieve compliance and the facility has ceased non-compliant activities. For example, a person has stopped illegally dumping waste, but the Department is unable to get the person to clean up the waste due to a lack of resources.
- The facility has closed permanently and the Department is unable to pursue enforcement as a result.
- The Department is unable to locate the responsible owner and operator, *i.e.*, they have moved out of state.
- All administrative enforcement actions have been pursued or considered and none have or will result in compliance, and a referral for court enforcement is not appropriate.

In Dereferring a case, the enforcement specialist prepares a Case Closure Memorandum, which is prepared and processed in the same manner as discussed in the previous section. Since no enforcement action was taken, there is no requirement to notify the facility. If the case is being Dereferral because no enforcement action is required, the facility may be notified of that fact.

Dereferral is not appropriate, however, for RCRA cases that are still in RCRIS unless all enforcement avenues have been explored and EPA agrees with the decision not to pursue the case further.

A boilerplate Case Closure Memorandum is found at Attachment 2A-10.

### **III. ENFORCEMENT TRACKING AND REPORTING**

Regional staff track all enforcement cases to document adherence to statutory and regulatory requirements and the achievement of agency goals and EPA grant conditions. For each media where applicable, compliance tracking is implemented consistent with EPA enforcement policy requirements. Appropriate regional staff shall confer monthly to evaluate ongoing enforcement matters. At a minimum, cases shall be reviewed quarterly.

For formal enforcement actions, each region shall maintain an enforcement case tracking list showing progress of all cases until settlement is achieved or administrative or judicial agreements are in place. This tracking list shall be provided to the Central Office upon request.

The Regional Offices shall also maintain monthly numerical counts of enforcement activities undertaken. A page for enforcement activity tracking is included in the monthly Director's Report on K:\Agency and is called ROMORPT. Regional Offices will use this form to report monthly activity to the OEC.

The Regional Offices send a copy of all issued NOV's, ERP's, and Consent Orders to the Office of Enforcement Coordination, which coordinates necessary tracking for EPA. Additional monthly and quarterly information for each media will be requested as required by each grant.

In the Air Program, all Excess Emission Reports ("EERs") shall be forwarded to the Central Office after Regional Office review within 30 days of receipt from each source. All data entry into the federal database ("AIRS") will be completed by the Central Office.

#### **A. HAZARDOUS WASTE PROGRAM REPORTING TO EPA**

The hazardous waste program is administered by the Commonwealth for EPA. Because the hazardous waste portion of the waste program is funded by EPA grant money, all hazardous waste activity must be reported to EPA. DEQ notifies EPA of its hazardous waste activity through the Resource Conservation and Recovery Act Information System ("RCRIS") system. RCRIS is EPA's database of inspection, enforcement and permitting information for RCRA-regulated facilities. Any time the specialist takes an action on a hazardous waste case, the action is recorded and reported on the Evaluation-Violation-Enforcement Form. This form is sent to the RCRIS administrator in the Central Office for transmittal to EPA.

Practically all actions are recorded on the RCRIS form. There is a code for referral from compliance, a code for issuing a draft order, a code for issuing the revised order, codes for an executed order, and codes for referral to EPA. Prompt reporting of hazardous waste enforcement actions is essential to maintaining DEQ's grant funding.

Another way EPA tracks DEQ's enforcement actions is by the Timely and Appropriate ("T&A") List. RCRA policy states that cases are to be resolved within 300 days. If the case is not resolved, it may be placed on the T&A list which shows how long a facility has been out of compliance. If the case remains on the T&A list for too long, DEQ runs the risk of an EPA overfile. In order to avoid an overfile, the specialist must take care to document all hazardous waste enforcement actions.

**B. AIR PROGRAM REPORTING TO EPA WITH “AIRS”**

Enforcement activities must be reported both internally (Office of Enforcement Coordination) and to EPA through Aerometric Information and Retrieval System (“AIRS”). The internal report requires submittal of information on all levels of enforcement through an established report format.

Reporting of enforcement-related activities to AIRS is necessary for “formal” enforcement actions (NOV and CO). These actions may be entered directly into AIRS or through ITS as a batch upload. Section 105 Grant commitments require that this type of information be entered into AIRS within 30 days of the activity or occurrence. In addition to the actions specific to NOV and COs, action entries for “Civil Charge Assessed,” “Civil Charge Received,” and “Final Compliance” may be necessary.

**C. WATER PROGRAM REPORTING TO EPA WITH “PCS”**

EPA tracks the performance of the Commonwealth’s VPDES facilities through its Permit Compliance System (“PCS”) Database, which is updated by the Office of Enforcement Coordination staff monthly. All reportable noncompliance by Majors is reported quarterly on the Quarterly Noncompliance Report (“QNCR”). The QNCR summarizes noncompliance information for all Major facilities violating the terms and schedules of NPDES permits, enforcement actions, and pretreatment programs. The QNCR is used by EPA to compare the activities of regional and state authorities for consistency and ensuring that timely and appropriate enforcement is initiated. This reporting is required by the Commonwealth’s federal 106 water grant.

By the last day of each month, Regional compliance staff electronically transmits the previous month’s DMR data for all Major permits to the Office of Enforcement Coordination (*e.g.*, January data is transmitted to OEC by February 28). OEC staff reformats the data and transmits the DMR data electronically to PCS monthly. OEC then generates a “missing data report” from PCS, which identifies missing data and missing DMRs from the Regions. OEC and the Regions work together to obtain the missing data and OEC then uploads PCS accordingly.

Before the QNCR is finalized and sent to EPA, the OEC staff works to validate and correct, as necessary, the data contained in the QNCR. In doing so, OEC works with the Regional Office to identify and correct errors. Failure to do so may result in a facility being reported as significant noncompliance (“SNC”).

**ATTACHMENTS**

- 2A-1 ~~Warning Letter Boilerplate~~
- 2A-2 ~~Notice of Violation Boilerplate~~
- 2A-3 Letter of Agreement Boilerplate
- 2A-4 Consent Order Boilerplate
- 2A-5 Enforcement Recommendation and Plan Boilerplate
- 2A-6 Sample Transmittal Letter for Publication of Notice in *Virginia Register*
- 2A-7 Executive Compliance Agreement Boilerplate
- 2A-8 15-Day Letter Form
- 2A-9 Criminal Investigation Unit Notification Routing Form
- 2A-10 Case Closure Dereferal Memorandum Boilerplate
- 2A-11 ~~UST Warning Letter Boilerplate~~
- 2A-12 ~~UST Notice of Violation Boilerplate~~
- 2A-13 UST Letter of Agreement Boilerplate
- 2A-14 UST Consent Order Boilerplate
- 2A-15 UST Executive Compliance Agreement Boilerplate
- 2A-16 ~~Alternate DMR Notice of Violation Boilerplate~~

# **ATTACHMENTS**

The following attachments have been superseded and removed from the Revision No. 1 sample boilerplates dated December 1, 1999.

2A-1

2A-2

2A-11

2A-12

2A-16

**[LETTERHEAD]**

[Date]

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

[Facility Contact]  
[Facility Name]  
[Street Address]  
[City, State, Zip Code]

**LETTER OF AGREEMENT**

Re: [Facility Name]  
Permit No. \_\_\_\_\_  
[DEQ Identification Number]

Dear [Facility Contact]:

As we have discussed, the following is a Letter of Agreement between [Facility Name] and the Department of Environmental Quality (DEQ) proposing a schedule to address violations of your Permits. By signing both originals and returning one original to this office by [Date], you accept the terms of this Letter of Agreement.

[Give details of permit exceedences or other problems and DEQ's Notices of Violation to the facility. Do not describe exceedences in terms of violation(s) or conclusions of law. For each exceedence, state specifically the applicable statutory or regulatory provision that you think applies. Use numbered paragraphs for each factual condition being addressed.]

[Facility Name] met with DEQ staff to discuss actions being taken to determine the cause(s) of the toxicity and prevent future violations. To that end, [Facility Name] and DEQ have agreed upon the following schedule of corrective action [use numbered paragraphs for the schedule].

[Facility Name]  
Letter of Agreement  
Page 2 of 2

Thank you for your cooperation. Please address any questions you have about this Letter of Agreement to [DEQ staff member] at (XXX) XXX-XXXX.

Sincerely,

[Responsible DEQ Staff]  
[Title]

cc: Enforcement/Compliance File

Seen and agreed:

\_\_\_\_\_ Date \_\_\_\_\_

Commonwealth of Virginia  
City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20XX, by \_\_\_\_\_, who is  
(Name)

\_\_\_\_\_ on behalf of [Facility Name].  
(Title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**[LETTERHEAD]**

**[BOARD NAME] ENFORCEMENT ACTION  
[SPECIAL] ORDER BY CONSENT  
ISSUED TO  
[FACILITY NAME]  
[Permit No. \_\_\_\_\_]**

**SECTION A: Purpose**

This is a Consent [Special] Order issued under the authority of Va. Code § \_\_\_\_\_ [see Definition 2], between the [Board] and [Facility Name], for the purpose of resolving certain violations of [environmental law and/or regulations].

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the [State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184 *OR* State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7 *OR* Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184].
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent [Special] Order.
6. “[Facility Name]” means [full name of individual, corporation, partnership, etc.], certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Facility” means the [business location] located in [City/County], Virginia.

8. “\_\_\_\_\_RO” means the \_\_\_\_\_ Regional Office of DEQ, located in [City], Virginia.
9. “Permit” means [specify permit], which became effective [date] and expires [date]. Permit limits include [give details].
10. “O&M” means operations and maintenance.

**SECTION C: Findings of Fact and Conclusions of Law**

1. [Facility Name] owns and operates a facility in the [Location], Virginia. This facility is the subject of [specific permit], which allows [give details].
2. Since the facility opened in [date], DEQ has noted numerous apparent violations of the [State Water Control Law/Air Pollution Control Law/Waste Management Act] and regulations. These problems, noted in a Notice of Violation issued by DEQ [date], include:
  - [use bullets to give details]
3. [Facility Name] has corrected many of the problems cited in the Notice of Violation. [Provide details.]
4. [Facility Name] is working with DEQ staff [give details of actions].

**SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code [§10.1-1316(C), §10.1-1455(F), or § 62.1-44.15(8a) and (8d)], orders [Facility Name], and [Facility Name] agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders [Facility Name], and [Facility Name] voluntarily agrees, to pay a civil charge of \$X,XXX within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the “Treasurer of Virginia”, delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of [Facility Name], for good cause shown by [Facility Name], or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to [Facility Name] by DEQ on [date]. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, [Facility Name] admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. [Facility Name] consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. [Facility Name] declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the [State Water Control Law/Air Pollution Control Law/Waste Management Act] and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by [Facility Name] to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. [Facility Name] shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. [Facility Name]

shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. [Facility Name] shall notify the DEQ Regional Director in writing when circumstances are anticipated

to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and [Facility Name]. Notwithstanding the foregoing, [Facility Name] agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to [Facility Name]. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve [Facility Name] from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, [Facility Name] voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 20XX.

\_\_\_\_\_  
[Name], Director  
Department of Environmental Quality

[Facility Name] voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia  
City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_ day of  
\_\_\_\_\_, 20XX, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of [Facility Name], on behalf of the Corporation.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

## **APPENDIX A**

[Facility Name] shall:

- 1.
- 2.
- 3.

**CONFIDENTIAL**

**ENFORCEMENT RECOMMENDATION & PLAN (ERP)**

**REGION:**

**DATE:**

**FACILITY / OWNER:**

**LOCATION:**

**PERMIT / REGISTRATION NO.** (if applicable):

**MEDIUM:**

**SIGNIFICANT VIOLATOR:** \_\_\_ yes \_\_\_ no

**STATE WATERS AFFECTED** (if applicable):

**VIOLATIONS:**

Citation(s)	Description

**CASE SUMMARY:**

**RESOURCE DAMAGES AND/OR POTENTIAL FOR HARM:**

**EFFECT ON REGULATORY PROGRAM** (if applicable):

**PREFERRED ACTION:**

**RECOMMENDED CIVIL CHARGE:** (also see attached)

**RECOMMENDED BY:**

**CONCURRENCE** (initial and date):

\_\_\_\_\_  
Compliance/Enforcement Manager

\_\_\_\_\_  
date

\_\_\_\_\_  
Regional Director

\_\_\_\_\_  
date

**COMMENTS:**

cc: OEC, Central Office

**[LETTERHEAD]**

[Date]

Registrar of Regulations  
Virginia Code Commission  
910 Capitol Street  
2nd Floor  
Richmond, Virginia 23219

Attention: Deputy Registrar

Re: General Notice  
[Facility Name]

Dear Sir or Madam:

Enclosed are three copies of a general notice regarding a proposed special order for [Facility name]. Please publish this notice in the General Notices section of the next issue of the Virginia Register. To assist me in the tracking of the notice period, please stamp the date you received the enclosed notice on one of the copies I have provided and return it to me.

Sincerely,

[DEQ Staff]  
[Title]

Enclosures (3)

cc: Enforcement/Compliance File



[STATE AGENCY]

APPENDIX A

[State Agency] agrees to:

- 1.
- 2.
- 3.
- 4.
- 5.

**[LETTERHEAD]**

[Date]

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

[Facility Contact]  
[Facility Name]  
[Street Address]  
[City, State, Zip Code]

Dear [Facility Contact]:

As you are aware, [Facility Name] has been issued [X] Notices of Violation in the last [X] months for alleged violations of State Water Control Law at your facilities. In addition, as my staff has discussed with you, inspections at your facility have revealed either contamination or the potential for contamination of ground and surface water.

The Department of Environmental Quality's ("DEQ") staff has reason to believe that the alleged violations of the State Water Control Law and regulations in this matter are serious enough to warrant seeking judicial remedies, which may include injunctive relief and/or civil penalties. The staff intends to recommend to the State Water Control Board at its [date] meeting that it consider authorizing DEQ to request the Attorney General to seek appropriate legal action for these violations of State Law. Legal action may include a civil penalty of up to \$25,000 per day for unpermitted discharges of pollutants to state waters.

You may wish to be present during the staff's presentation to the Board on this matter. Please understand that this is not a hearing nor is a hearing required under any provisions of the law. However, the Board in its discretion and in order to more clearly ascertain the facts in this matter, may allow you to make a statement on your behalf or may have some questions. Any statement or answers may be limited as to content or duration.

Please be advised that any decision by the Board to refer this matter to the Attorney General for legal action will not be a determination of liability against [Facility Name], only a decision that a determination of liability by court action may be appropriate. Therefore, the Board will act on this matter whether or not you or your representative choose to be present. Moreover, the Assistant Attorney General who would handle any litigation on this matter will be present to advise the Board.

This matter will be presented to the Board on [date] at [location], at [time], or as soon thereafter as possible, depending on such other matters as may be before the Board.

The Virginia State Water Control Law at Code § 62.1-44.15(8d) allows the Board to provide for the payment of a civil charge through the issuance of a consent special order. You may wish to pursue this administrative alternative to avoid a costly and protracted legal proceeding and the potential liability for court imposed civil penalties.

Should an administrative settlement be negotiated, the terms of the agreement in a consent special order would be presented to the Board at its [date] meeting. Such consent special order must receive public notice for a 30-day period and must be approved by the Board prior to issuance by the Director. If you wish to discuss such a settlement, please contact [DEQ staff] at (XXX) XXX-XXXX. If we do not hear from you by [date five days prior to Board meeting], this matter will be presented to the Board with the recommendation that the Board authorize DEQ to request judicial action by the Attorney General's Office.

Sincerely,

[DEQ Staff]  
[Title]

**CRIMINAL INVESTIGATION UNIT - NOTIFICATION ROUTING - CONFIDENTIAL**

TO: Criminal Investigation Unit

Facility Name: \_\_\_\_\_ PC #: \_\_\_\_\_  
Address: \_\_\_\_\_ Permit #: \_\_\_\_\_  
Location: \_\_\_\_\_ Phone #: \_\_\_\_\_  
Facility owner(s): \_\_\_\_\_ Operator: \_\_\_\_\_ Contact: \_\_\_\_\_  
Vio. Reported By: \_\_\_\_\_ Date Vio. Reported: \_\_\_\_\_ Region: \_\_\_\_\_

**CATEGORIES OF NON COMPLIANCE**

PROGRAM(S) VIOLATED: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ALLEGED POTENTIAL CRIMINAL VIOLATIONS:**

MISDEMEANOR: WILLFUL [ ] NEGLIGENT [ ]  
FELONY: KNOWING VIOLATION [ ]  
KNOWING FALSE STATEMENT [ ]  
KNOWING MEASURING DEVICE [ ]  
KNOWING IMMINENT DANGER [ ]

**DESCRIPTION OF ALLEGED VIO.(S)** Vio. Date: \_\_\_\_\_ (List each date if diff.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EVIDENCE** (ATTACH PERTINENT DOCUMENTS)

STAFF WITNESS: [ ] OTHER WITNESS: (signed statements) [ ]  
FILE/DOCUMENTS: [ ] CAS INDICATOR/PRINTOUT: [ ]  
DMRS: [ ] SUSPICIOUS REPORT: [ ]  
PICTURES: [ ] SUSPICIOUS ACTIVITY: [ ]  
VIDEO TAPES: [ ] VERBAL REPORT: [ ]  
LAB DATA: [ ] OTHER NON-HARD EVIDENCE: [ ]  
OTHER HARD EVID.: [ ]

**ENVIRONMENTAL IMPACT**

NO [ ] YES [ ] LIST STATE WATER(S) IMPACTED: \_\_\_\_\_  
UNKNOWN [ ] (Describe below or use attachment)

**ECONOMIC ADVANTAGE**

NO [ ] YES [ ] UNKNOWN [ ] (Describe below or use attachment)

COMPLIANCE  
ENFORCEMENT

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
DATE

**CONCURRENCES**

\_\_\_\_\_  
ENF. MANAGER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
REG. DIR.

\_\_\_\_\_  
DATE

**COMMENTS:**

\_\_\_\_\_

**CASE CLOSURE/DEREFERRAL MEMORANDUM**

**TO:** File

**FROM:** \_\_\_\_\_

**THROUGH:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**COPY:** \_\_\_\_\_

**RE:** [Case name]

**Permitted Facility. Permit No.:** \_\_\_\_\_

**Complaint. Complaint No.:** \_\_\_\_\_

**Referral Date:** \_\_\_\_\_

**Location and/or Address:** \_\_\_\_\_

**Reason for CLOSURE:**

**Compliance achieved through informal action.**

**Letter of Agreement issued.**

**Consent order issued.**

**Referral. Referred to:**

**Contact:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Comments:** \_\_\_\_\_

\_\_\_\_\_

**Reasons for DEREFERRAL:** \_\_\_\_\_

\_\_\_\_\_

**Date Closed/Dereferred:** \_\_\_\_\_

Recommended by: \_\_\_\_\_  
Name Title Date

Concurrence:

\_\_\_\_\_  
Enforcement Manager Date

\_\_\_\_\_  
Media Manager Date

\_\_\_\_\_  
Regional Compliance Manager Date

\_\_\_\_\_  
Regional Director Date

Copies: [Central Office]  
[Regional Manager]

**Closed By:** \_\_\_\_\_

**[LETTERHEAD]**

[Date]

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

[Facility Contact]  
[Facility Name]  
[Street Address]  
[City, State, Zip Code]

**LETTER OF AGREEMENT**

RE: Letter of Agreement No.  
UST Compliance at [Facility Address]  
FAC ID NO. [ ]

Dear [Facility Contact]:

As per our discussion of [date], the following is a Letter of Agreement between [Facility Name] and the Department of Environmental Quality (ADEQ) proposing a schedule that will bring your facilities into full compliance with 9 VAC 25-580-60 (Upgrading of Existing Underground Storage Tank (AUST) Systems). By signing both originals and returning one original to this office by [Date], you accept the terms in this Letter of Agreement.

[Facility Name] and the Department of Environmental Quality, [Specific ] Regional Office, agree that [Facility Name] shall:

1. **By [Date]**, complete all necessary upgrades of USTs at its facility at [Facility Address] in accordance with 9 VAC 25-580-60.
2. **By [Date]**, submit documentation to [Region Office] in accordance with 9 VAC 25-580-70 that all work required by Item 1 has been completed.
3. **By [Date]**, complete all necessary upgrades of USTs at its facility at [Facility Address] in accordance with 9 VAC 25-580-60.
4. **By [Date]**, submit documentation to [Region Office] in accordance with 9 VAC 25-580-70 that all work required by Item 3 has been completed.

5. [Facility Name] understands that failure to come into full compliance with the underground storage tank technical regulation (9 VAC 25-580-10 *et seq.*) by the deadline in this Agreement may result in the Regional Office initiating enforcement action that may include a substantial civil charge, including recovery of the economic benefit of noncompliance.

Thank you for your cooperation. Please address any questions you have about this Letter of Agreement to [DEQ Staff] at (XXX) XXX-XXXX.

Sincerely,

[Responsible DEQ Staff]

Seen and agreed to on behalf of [Facility Name]:

\_\_\_\_\_

Date

\_\_\_\_\_

Name

\_\_\_\_\_

Title

cc: OEC  
OSRR  
Enforcement file

**[LETTERHEAD]**

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

**A SPECIAL ORDER BY CONSENT  
ISSUED TO**

**[Facility Name]**

**[Facility Address]**

**SECTION A: Purpose**

This is a Special Order by consent issued under the authority of §§ 62.1-44.15 (8a) and (8d) of the Code of Virginia issued by the State Water Control Board between the Board and [Facility Name] to resolve certain violations of the State Water Control Law and regulations, resulting from failure to upgrade, replace or close existing UST systems at [Facility Name] UST facility located at [Facility Address].

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
2. “Code” means the Code of Virginia (1950), as amended.
3. “The Company” or “[Abbreviated Facility Name]” means [Facility Name], a company incorporated in the State of Virginia, federal tax identification number [ ].
4. “Department” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
5. “Director” means the Director of the Department of Environmental Quality.
6. “The Facility” means the retail gasoline station and USTs owned and operated by [Facility Name and Address]. The Facility’s USTs are further identified as UST ID#[ ].

7. “Order” means this document, also known as a Consent Special Order.
8. “Regional Office” means the [Specific] Regional Office of the Department.
9. “The Regulation” means 9 VAC 25-580-60 (Upgrading of Existing UST Systems), which requires that all USTs meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
10. “UST” means underground storage tank.

**SECTION C: Findings of Fact and Conclusions of Law**

1. The Regulation requires that all USTs meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
2. [Facility Name] is an UST owner and/or operator within the meaning of Code § 62.1-44.34:8.
3. [Facility Name] failed to meet the December 22, 1998 deadline for UST compliance at the Facility as required by the Regulation. The failure was documented by a Department inspection of the Facility conducted on [date] (see the attached UST Facility Checklist), and in Notice of Violation No. [ ] issued by the Department [date].

**SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of its authority in Code §§ 62.1-44.15 (8a) and (8d), orders [Facility Name] and [Facility Name] agrees:

1. To remedy the violations described above and bring the Facility into compliance with the Regulation, [Facility Name] shall perform the actions described in Appendix A to the Order.
2. [Facility Name] shall pay a civil charge of \$XXX within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or

cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control

Department of Environmental Quality

Post Office Box 10150

Richmond, Virginia 23240

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of [Facility Name], for good cause shown by [Facility Name], or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, [Facility Name] admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. [Facility Name] consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. [Facility Name] declares it has received fair and due process under the Virginia Administrative Process Act, Code §§ 9-6.14:1 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by [Facility Name] to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive

or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. [Facility Name] shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. [Facility Name] must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. [Facility Name] shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which [Facility Name] intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and [Facility Name]. Notwithstanding the foregoing, [Facility Name] agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:
  - a. [Facility Name] petitions the Regional Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that [Facility Name] has satisfied all the requirements of the Order is a "case decision" within the meaning of the Virginia Administrative Process Act; or
  - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to [Facility Name].

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve [Facility Name] from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, [Facility Name] voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20XX.

\_\_\_\_\_  
[Name], Director  
Department of Environmental Quality

[Facility Name] voluntarily agrees to the issuance of this Order.

Date: \_\_\_\_\_

By:

Title:

[Facility Name]

Special Order

Page 6 of 6

Commonwealth of Virginia

City/County of

The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day of

\_\_\_\_\_, 20XX, by \_\_\_\_\_, who is

(name)

\_\_\_\_\_ of [Facility Name], on behalf of the Corporation.

(title)

\_\_\_\_\_.

Notary Public

My commission expires: \_\_\_\_\_.

**Appendix A**  
**[Facility Name]**  
**[Facility Address]**

[Facility Name] shall:

1. By [date], ensure that it has submitted accurate, up to date Financial Responsibility documentation for the facility in accordance with 9 VAC 25-590-10 *et seq.*
2. By [date] ensure that it has submitted accurate, up to date registration forms for the facility in accordance with 9 VAC 25-580-10 *et seq.*
3. (PLAN AND SCHEDULE FOR UST COMPLIANCE)

**EXECUTIVE COMPLIANCE AGREEMENT**

**[STATE AGENCY]**

**REGARDING**

**[STATE FACILITY]**

This is an Executive Compliance Agreement (the "Agreement") between the [State Agency] and the Virginia Department of Environmental Quality ("DEQ") pursuant to the Director's authority, as set forth in §§ 62.1-44.14 and 10.1-1185 of the Code of Virginia, to exercise general supervision and control over the quality and management of State waters and to administer and enforce the State Water Control Law.

The [State Agency] operates [number] underground storage tanks (AUSTs@) at [State Facility]. 9 VAC 25-580-60 (Athe Regulation@) requires that all USTs meet final, specific performance requirements for leak detection, spill and overflow protection and corrosion protection by December 22, 1998. [State Agency] failed to meet the December 22, 1998 deadline for UST compliance as required by the Regulation. The failure was documented by a Department Inspection at [State Facility] conducted on [date] (see attached UST Facility Checklist), and in Notice of Violation No. [XXXX] issued by the Department on [Date].

To remedy these matters, [State Agency] and DEQ agree to the schedule of action in Appendix A.

